

## **CONTRACTING AND PROCUREMENT POLICY POLICY NO. 11000**

### **11000.1 PURPOSE**

This policy establishes contracting and procurement standards to guide the selection of the most qualified firms to perform services to the best advantage of the Agency. It provides guidance to SANBAG staff with respect to policy considerations adopted by the SANBAG Board of Directors.

### **11000.2 REFERENCES**

Policy 10025, Guidelines for Agenda Materials

### **11000.3 POLICY**

All contracts, including contracts for construction projects, leases of real property, professional services, and service and maintenance contracts, shall be processed according to the following policies.

### **11000.4 CONTRACT TYPES**

SANBAG may enter into a variety of contract types, each of which may be subject to different rules as a function of state and/or federal law and SANBAG policy. The different contract types and rules affecting them are specified in this policy.

#### **11000.4.1 Professional Services Contracts**

1. SANBAG may, from time to time, enter into agreements with private firms or other agencies to perform ongoing services. Such contracts are geared toward the performance of specific functions on a continuing or as-needed basis, as opposed to the completion of a clearly specific scope of work or preparation of a discrete work product. Examples of professional services contracts are for legislative advocacy, legal counsel, program management, and construction management.
2. When selecting private firms to perform such services, this type of contract must be awarded on the basis of demonstrated competence and on the professional qualifications necessary for the satisfactory performance of the services at a fair and reasonable price to SANBAG. Such selection shall take into consideration prior experience of the firm and/or representatives, understanding of work to be completed, knowledge of the working environment, and particular skills and expertise of the firm and/or representatives proposed for the function.

#### 11000.4.2 Product Specific Professional and Technical Services Consultants

1. SANBAG may enter into contracts for the preparation of specific designs, studies, reports, or work products. These contracts are defined by very specific scopes of work and discrete work products, set periods of performance, and negotiated costs. Examples of product specific professional services contracts are for architectural reports, historic surveys, engineering reports and feasibility studies.
2. When selecting private firms to perform such services, this type of contract must be awarded based on demonstrated competence and on the professional qualifications necessary for the satisfactory performance of the services at a fair and reasonable price to SANBAG. Such selection shall take into consideration prior experience of the firm and project managers, organization of the project tasks, understanding of tasks to be completed, understanding of project goals, knowledge of the working environment, and particular skills and expertise of the firm and/or managers proposed for the project.

#### 11000.4.3 Public Works/Construction Contracts

SANBAG may enter into contracts for public works or specific construction. These contracts are subject to the California Public Contracts Code and must be awarded to the lowest responsible bidder. Examples of this type contract are for roadways, bridges, signals, and other public works projects.

#### 11000.4.4 Leases of Real Property

SANBAG may, from time to time, enter into contracts for the leasing of real property belonging to SANBAG or leased for use by SANBAG. Examples of this type contract are for office space occupied by SANBAG staff, lease of rail rights-of-way owned by SANBAG not immediately required for rail operations; or other short-term project specific leases.

#### 11000.4.5 Purchase Orders

1. The purchase order procedures are developed for efficiency in processing transactions where services and supplies are clearly specified and provide for expedient delivery of products and services. Purchase orders are binding documents that establish a vendor's acceptance of the offer and mutually agreed upon terms and conditions, expected performance, and consideration for performance.
2. Products and services for amounts less than \$25,000 in any one-year period, other than purchase and lease of real property and employment contracts, may be purchased using purchase order procedures.

3. The Executive Director, or his designee, is authorized to approve Purchase Orders up to an amount of \$25,000. Purchase Orders over \$25,000 or exceeding a cumulative amount of \$25,000 in any one year period must be approved by the Board of Directors.

4. All procurements for supplies and services approved by the Executive Director, or his designee, in excess of \$5,000 shall be routinely reported to the Board of Directors.

## **11000.5 STANDARD PROCEDURES**

The SANBAG standard practice shall be that:

A. Contracts shall be required for construction projects, roadwork, purchase or lease of real property and all employment contracts.

B. All contracts shall be reviewed by legal counsel prior to presentation to the Board for approval.

C. All contracts shall specify a period of performance, description of the function to be performed, total contract amount, and appropriate performance standards.

D. All contracts shall contain a standard non-discrimination clause.

E. When utilizing state and federal funds requiring more rigorous or different standards than applied by these policies, such standards will prevail. SANBAG is responsible for ensuring that such standards are met and/or are included in appropriate contracts.

F. The maximum term for standard SANBAG contracts, unless otherwise authorized by the Board of Directors, shall be for three years.

G. Special consideration is required in the instances of a formal competitive process resulting in only one bidder. In those instances, SANBAG staff shall evaluate factors relative to the competitive process, including adequacy of notification to qualified competitors, requirements of the RFQ/RFP, the amount of time provided to respond to the RFQ/RFP, adequacy of the one proposal received, and urgency. After such an analysis, the Executive Director shall make a recommendation to either accept or reject the proposal. Each circumstance will require consideration of facts relevant to the specific solicitation and work to be performed.

H. All contracts, contract amendments, and memoranda of understanding must be approved by the Board of Directors, unless otherwise authorized by the Board of Directors. In order to prevent delays that would result in negative impacts to

SANBAG projects and/or programs, SANBAG staff will provide sufficient time for SANBAG Policy Committees and the Board of Directors to appropriately review and consider staff recommendations for approval of contracts and contract amendments. Refer to Policy 10025.

I. In the event of significant time constraints, extenuating circumstances, or emergencies when approval is required, either the Administrative Committee or the Plans and Programs Committee is authorized to approve contracts in excess of \$25,000, subject to Board of Directors ratification. Ratification shall be obtained at the next regularly scheduled meeting of the Board of Directors following such approval.

J. The SANBAG President is the officer designated to sign contracts on behalf of the organization, unless otherwise authorized by the Board of Directors. In the absence of the SANBAG President, the SANBAG Vice President is authorized to sign contracts on behalf of the organization.

#### **11000.6 PUBLIC WORKS CONTRACTS**

Public Works Contracts over \$6,500 shall be awarded based upon a competitive process as governed by California Public Contracts Code.

#### **11000.7 SUPPLIES AND SERVICES CONTRACTS**

SANBAG shall maintain a listing of vendors who have expressed an interest in doing business with the Agency. The listing shall include the vendor's primary contact for competitive processes and the vendor's field of expertise as stated by the vendor.

##### **11000.7.1 Supplies and Services Competitive Processes**

1. Informal Competitive Procurement. Informal competitive procurement procedures will generally be used for purchases in excess of \$5,000, but not exceeding \$25,000. The following general procedures, depending upon the type of purchase, should be used for informal competitive procurement:
  - a. A telephone survey for quotations will generally be taken for purchases of goods and services. In such cases, the buyer specifically identifies the item being purchased. Award of a purchase order will be to the lowest responsive responsible bidder whose bid conforms to the requirements.
  - b. Informal Requests for Quotes or letters may be required if the goods or services being requested require bidders to have more detail. SANBAG will issue a Request for Quotation to a limited number of firms/individuals. Award of a purchase order will be to the

responsible bidder whose bid conforms to the requirements and is most advantageous to SANBAG as to price and other factors considered.

c. Use of electronic quotation systems operating within San Bernardino County is authorized.

d. SANBAG will document results of all such informal procurement actions.

2. Formal Competitive Procurements - Request for Proposal/Request for Qualifications. The formal Request for Proposal (RFP)/Request for Qualifications (RFQ) process is used to solicit proposals for services in excess of \$25,000 and for solicitation of proposals less than \$25,000 in instances where this process is deemed appropriate.

a. The RFP/RFQ process is a competitive procurement process that requires evaluation of offeror's proposal and qualifications. This competitive procurement process does not require award to the lowest bidder.

b. This process applies to professional services contracts and product specific professional and technical consulting contracts, including engineering, environmental, surveying, construction management, and architectural services. These contracts shall be awarded based upon demonstrated competence and on the professional qualifications and capabilities necessary for the performance of services required at a fair and reasonable price to SANBAG.

c. SANBAG will provide complete RFP packages to vendors identified as providing the specific services being requested in the RFP/RFQ either by mail or other methods.

d. SANBAG will maintain a control record as RFP packets are distributed indicating the date and time of distribution. The record shall contain the names and addresses of offerors receiving the proposal invitations and attendance at pre-proposal conferences, if held. The control record shall be used as a mailing list for the issuance of addendums and as a verification record in the case of vendor protests.

e. Pre-proposal conferences will be held, when appropriate, to discuss the basic requirements such as instructions to the offerors, funding, contract type, evaluation criteria, and specific points that should be addressed in each proposal.

f. Included in the RFP/RFQ, will be the question if their firm was ever terminated from a contract. If so, the firm will be required to describe the facts and circumstances in detail.

### 3. Formal Competitive Procurements - Request for Bids

a. The competitive sealed bid method of procurement is used for purchases in excess of \$25,000:

1. When a complete, adequate and realistic specification or purchase description is available;
2. Two or more responsible suppliers are willing and able to compete effectively; and
3. The procurement lends itself to a firm-fixed price contract and the election of the successful bidder can be made on the basis of price.

b. A control record will be maintained as invitations for bids are distributed indicating the date, time, and/or place of distribution or notice. The record shall contain the names and addresses of offerors receiving the proposal invitations or posting of the notice. The control record shall be used as a mailing list for the issuance of notices relative to the request for bids and as a verification record in the case of vendor protests.

c. Award of a contract shall be made to the responsive, responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is lowest in price.

#### **11000.7.2 Consultant Selection Process**

1. Authorization to circulate Request for Proposals (RFP)/Request for Qualifications (RFQ). Staff will obtain Board of Directors approval prior to circulation of any RFP/RFQ.

2. Preparation and distribution of RFP/RFQ. SANBAG staff and/or contract staff will prepare the scopes of work and the RFP/RFQ.

3. Appointment of Selection Team. The Board of Directors, Policy Committees and/or SANBAG staff shall appoint a selection team. A representative of SANBAG member jurisdictions or representatives of SANBAG counterpart agencies shall be invited to participate in the selection of contractors and consultants, when appropriate. In the instance of SANBAG Major Projects contracts, the selection team shall consist of 2 Caltrans representatives and 3 representatives from member or counterpart

agencies, or members of the Board of Directors or their designees. Members of the selection team shall be appointed with reference to the discipline involved and the location of the project. When possible, SANBAG staff shall participate in the entire selection process.

4. SANBAG Staff. As used in this policy, the term “SANBAG staff” refers to full-time employees of SANBAG.

5. Responses to Queries. Numerous inquiries are typically received during the circulation period for any RFP/RFQ. Relevant information will be provided, and pre-proposal conferences will be held, when appropriate, to discuss the basic requirements such as instructions to offerors, funding, contract type, evaluation criteria, terms, scope, and the selection process. The names of the selection team are often requested. Relevant technical information will be provided, but names of the selection team shall not be made available prior to formal interviews.

6. Short-listing. Short-listing is the most important part of the process. Narrowing the list to a small set of qualified firms greatly reduces the likelihood of making a poor selection. Ensuring an adequate short-list is therefore very important. Members of the selection team shall review and evaluate all responses to establish a short-list of the most highly qualified firms in preparation for formal interviews.

For SANBAG Major Projects contracts, SANBAG staff and/or contract staff shall review all the statements of qualifications and prepare a single qualitative evaluation for each firm’s response to the RFP/RFQ that includes evaluative comments and rationale. Besides the normal criteria, the evaluative comments will focus especially on the following points:

- Understanding of the project.
- Management structure of the project team.
- Project approach.

This summary evaluation will then be forwarded to the actual selection team for their reference and use. The summary evaluations will be advisory only, and will not provide a ranking or numeric scoring of submittals. Each member of the team must then perform an independent review of the responses. The Director of Freeway Construction will then convene the selection team to prepare the short-list.

7. Interviews. The selection team shall convene to interview the short-listed firms. For SANBAG Major Projects contracts, one contract staff member shall be designed as ex officio member to participate during the

interview process in questioning and discussion, but shall have no vote, and will not attempt to influence the decision. This will ensure adequate technical expertise and perspective from SANBAG's program interests.

8. Debriefing. An essential part of the selection process is the debriefing of firms that were either not short-listed or not selected. Members of the selection team shall designate one member to meet with unsuccessful proposers to explain the selections that have been made and to offer recommendations for improving future proposals. Contract staff will not participate in the debriefing.

These procedures are intended to ensure that only highly qualified firms matching SANBAG's needs will be selected.

### **11000.7.3 Local Preference Policy**

1. The term "local" shall apply only to San Bernardino County until or unless an agreement with Riverside County Transportation Commission and/or other Riverside County agencies can be executed to define "local" as relating to the greater Inland Empire (both Riverside and San Bernardino Counties).

2. The purpose of this policy is to encourage firms to locate and remain in San Bernardino County and to promote economic development in San Bernardino County.

3. It is the policy of SANBAG to utilize the services of local consultants/firms to provide consulting services. SANBAG will award up to a 10 percent credit to local consultants/firms submitting Statements of Qualifications for professional services and consulting work. This policy shall not apply to contracts required under state law to be awarded on the basis of competitive bid.

4. This policy shall not retroactively apply to any existing contracts.

5. Firms shall be defined as follows:

A. Local. A firm shall be considered local and be awarded full 10 percent local preference credit, if the firm's main, or headquarters, or major regional office is in San Bernardino County. For this policy, a major regional office is defined as a business location apart from the headquarters which:

- Has been issued a business license, if required, and has been established and open for a minimum of six months prior to the date that the SANBAG Board or Executive Director authorizes the

circulation of an RFP/RFQ for any contract it which it responds, and

- Can demonstrate on-going business activity in the field of endeavor on which they are proposing from that office during the preceding six months, and

- Has a minimum of one senior management employee and nine regular employees working full time from the San Bernardino County location.

B. Partly Local Firm. A firm headquartered elsewhere with a branch office in San Bernardino County shall be considered partly local and receive 5 percent credit when it:

- Has been issued a business license, if required, and has been established and open for a minimum of six months prior to the date that the SANBAG Board or Executive Director authorizes the circulation of an RFP/RFQ for any contract it which it responds, and

- Can demonstrate on-going business activity in the field of endeavor on which they are proposing from that office during the preceding six months, and

- One senior management employee and four regular employees work at the partly local office.

C. Non-local Firm. A firm not fulfilling all the requirements of the preceding paragraph 5B shall be awarded 2.5 percent local preference credit on a graduated basis in keeping with the extent to which those requirements are satisfied by their sub consultants (e.g., 25 percent of the work in question to be performed by local sub consultants will warrant 25 percent of the local preference credit allowable for partly local firms).

6. A “local presence report” providing specific information regarding the firm’s local operation will be required as part of the Statement of Qualifications. For information purposes, all firms submitting proposals will be requested to prepare and provide a breakdown of those employees proposed to be engaged in the contracted work in the local office by county of residence.

7. Firms with no existing local office for a minimum of six months prior to the time that the SANBAG Board authorizes the circulation of the RFQ/RFP shall be awarded no local preference credit.

8. This policy shall not apply in contracts where federal funds are involved.

#### **11000.7.4 Major Projects Negotiating Guidelines**

The SANBAG Major Projects Task Force adopted guidelines on May 3, 1995, relative to Major Projects Negotiating Guidelines. Those guidelines shall provide guidance to SANBAG staff in negotiating professional services and product specific professional and technical services consultants. After following those guidelines, where staff, after diligent effort, cannot recommend a contract with the highest ranking firm due to an inability to negotiate a fair and reasonable price, negotiations will be initiated with the second highest ranking firm and proceed to a contract recommendation.

#### **11000.7.5 Sole Source Process**

In those specific instances when it may be necessary or prudent to enter into sole source contracts, specific approval shall be required.

1. All sole source contracts shall be governed by the following guidelines:

- a. Sole source contracts may be recommended for approval upon a finding of appropriateness and that it is in the best interest of the agency to do so.
- b. Contracts may be recommended for approval on a sole source selection based upon a requirement for unique qualifications, the existence of significant time constraints, and/or in certain instances of demonstrated experience.
- c. Any recommendation for approval of a contract for which a competitive process has not been completed shall contain justification for the lack of competition.
- d. Any recommendation to the Board of Directors for sole source procurement must be specifically called out in the agenda item and shall be placed on the discussion calendar.

2 be routinely reported to the Board of Directors.

#### **11000.8 LEASING OF REAL PROPERTY**

A. The SANBAG Board of Directors shall approve all lease agreements resulting from a call for bids.

B. The call for bids shall be posted in at least three public places for not less than 15 days and published for not less than two weeks in a newspaper of general circulation. The highest proposal for the proposed lease submitted in response to a call for bids shall be accepted, or all bids shall be rejected.

C. Leases for a period not exceeding ten years and having an estimated monthly rental of not more than \$5,000 may be excluded from the bidding procedure specified in the preceding paragraph 11000.8.B above. Leases excluded from the bidding procedure specified in paragraph 11000.8.B shall be subject to the following requirements.

1. Notices requesting offers to lease SANBAG property shall be posted in the SANBAG offices. Notices shall also be mailed or delivered at least 15 days prior to accepting offers to lease to any person who has filed written request for notice with SANBAG. Such requests to receive notices shall be renewed annually. Notice shall be published as provided in Government Code Section 6061.

2. Notices requesting offers to lease SANBAG property shall describe the property proposed to be leased, the terms of the lease, the location where offers to lease the property will be accepted, the location where leases will be executed, and any SANBAG officer authorized to execute the lease.

3. The Executive Officer, or his designee, is authorized to approve and execute leases exempted from the bidding procedures specified in the preceding paragraph 11000.8.B.

4. Leases exempt from the bidding procedures specified in the preceding paragraph 11000.8.B are not renewable except by approval of the Board of Directors after a competitive process.

D. The SANBAG Board of Directors' approval is required on all leases of real property for use by SANBAG, except that the Executive Director, or his designee, is authorized to lease real property for a term not to exceed three years and for a rental not to exceed \$2,500 per month. The Executive Director, or his designee, is authorized to amend real property leases for improvements or alterations with a total cost not to exceed \$2,500, provided that the amendment does not extend the term of the lease and that no more than two amendments, not exceeding \$2,500 each, are made within a 12-month period.

#### **11000.9 AMENDMENTS TO CONTRACTS**

From time to time, it may be necessary or convenient to amend contracts. All contract amendments shall be approved by the Board of Directors unless otherwise provided by action of the Board of Directors. Amendments may relate to all contract components of

the various contract types: terms and conditions, period of performance, compensation and fee, scope of work, or functional responsibility.

#### **11000.9.1 Professional Services Contracts**

1. In those instances where it has been determined that professional services are required beyond the term of the existing contract, the standard practice shall be for the contract to be reviewed prior to the end of the contracted performance period and assessed relative to (1) the scope and continued need for the function performed, (2) the adequacy of performance under the contract, and (3) other terms and conditions of the agreement.

2. Based upon the demonstrated competence and on the professional qualifications of the contractor and upon the particular project needs, professional services contracts may be recommended for extension or be recommended for recompetition.

3. Recompetition for professional services contractors serves to assess the competitive market conditions relative to expertise and pricing for services and may be prudent on a periodic basis. However, where professional services relate to specific on-going projects or levels of unique qualifications, skills, and experience, it may be appropriate to extend such contracts without recompetition. Staff shall analyze each contract based upon the specific project needs and include justification for such recommendation to the Board of Directors.

4. In those instances where it may be prudent for SANBAG staff to recommend against a renewed competitive process, the decision for lack of renewed competitive process may include the following instances:

a. When the amendments are the result of an increase in the scope of work for the same project, wherein the qualifications and experience required to perform the new tasks were clearly examined as part of the prior competitive process.

b. When, on the basis of a specific finding or competitive process prior to approval of the original contract, the contractor was determined to be the most qualified and responsive to undertake the work addressed by the contract amendment.

c. Where the contractor, based upon findings presented to the Board, of (1) specific qualifications, (2) unique knowledge of the project, or (3) unique knowledge of the work required, is found to be preeminently positioned to perform the work.

### **11000.9.2 Product Specific Professional and Technical Services Consultant Contracts**

1. The Board of Directors may periodically approve amendments to product specific professional and technical services consulting contracts contingent upon contractor performance and negotiation. Amendments may address all contract components, but typically relate to increased cost, the period of performance to accomplish the project, or adjustments to the scope of work.
2. Amendments to increase the cost and/or period of performance of an established scope of work are approved as a matter of prudence and necessity. These result from increased difficulty or range of work effort to accomplish the defined scope. Examples requiring such amendments include actions in response to review comments, the imposition of new state or federal regulations, various design complications, and other factors generally beyond the consultant's control and not anticipated during the initial cost proposal.

### **11000.9.3 Public Works/Construction Contracts**

1. Amendments and change orders to Public Works/Construction contracts shall comply with the California Public Contracts Code.
2. The Director of Freeway Construction is authorized to approve Construction Change Orders on all SANBAG Construction Contracts up to the authorized contract contingency amount and subject to the limitations imposed by Section 20142 of Public Contract Code. Change orders approved by the Director of Freeway Construction will be presented monthly for review and ratification by the Major Projects Committee. In the event that the \$150,000 limitation of Public Contract Code Section 20142 must be exceeded, prior approval of the SANBAG President will be obtained.

### **11000.10 STANDARD OF ETHICS**

- A. No SANBAG employee shall solicit, demand or accept from any person anything of a monetary value for or because of any action taken, or to be taken, in the performance of his or her duties. An employee failing to adhere to the above will be subject to any disciplinary proceeding deemed appropriate by SANBAG, including possible dismissal.
- B. No SANBAG employee shall use confidential information for his or her actual or anticipated personal gain, or the actual or anticipated personal gain of any other person related to such SANBAG employee by blood, marriage, or by common commercial or financial interest. An employee failing to adhere to the above will

be subject to any disciplinary proceeding deemed appropriate by SANBAG, including possible dismissal.

## 11000.11 REVISION HISTORY

Revision No.	Revisions	Adopted
0	New Policy. Adopted by the Board of Directors	01/03/97
1	Modified Para. 11000.10	01/07/98
2	Modified Para. 11000.7.2	01/07/98
3	Deleted & replaced Para. 11000.7.3	01/07/98
4	Added Para. 11000.10 B	03/04/98
5	Modified Para. 11000.10	06/03/99
6	-Added Para. 11000.7.2.f -Modified Para. 11000.7.3.5.B -Modified Para. 11000.9.3.2	09/01/99
7	-Added new Para. 11000.5.G -Re-identified Para. 11000.5.H (was Para. 11000.5.G) and revised to add "...or the Plans and Programs Committee . . ." -Re-identified Para. 11000.5.I (was Para. 11000.5.H) -Moved Para. 11000.7.5.3 to new paragraph 11000.7.5.1.d and added "...and shall be placed on the discussion calendar." -Added Para 11000.12 REVISION HISTORY	07/05/00
8	-Revised Par. 11000.2 DEFINITIONS to REFERENCES and added Policy 10025, Guidelines for Agenda Materials. -Revised Paragraphs 11000.5.H and 11000.5.I -Re-numbered original Par. 11000.5.I to 11000.5.J -Deleted Par. 11000.10 POLICY GOVERNING DISADVANTAGED BUSINESS ENTERPRISES; renumbered original Paragraphs 11000.11 and 11000.12 to 11000.10. and 11000.11.	01/09